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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In The Matter of the )  
Application of )  
 )  
HERBERT L. SCHOENBOHM )  
Kingshill, Virgin Islands )  
 )  
For Amateur Station )  
and Operator Licenses )

WT Docket No. 95-11

DOCKET FILE COPY ORIGINAL

To: Administrative Law Judge Edward Luton

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Chief, Wireless Telecommunications Bureau (Bureau), respectfully submits, by her attorneys, the following Proposed Findings of Fact and Conclusions of Law, pursuant to Section 1.263 of the Commission's Rules, 47 C.F.R. § 1.263.

PRELIMINARY STATEMENT

1. On February 2, 1994, Herbert L. Schoenbohm applied for renewal of his amateur station and operator licenses. Those licenses were originally scheduled to expire on March 2, 1994, but their term has been extended pursuant to Section 1.62(a) of the Commission's Rules, 47 C.F.R. § 1.62(a), until the disposition of Mr. Schoenbohm's application.
2. On February 6, 1995, the Bureau, under delegated authority, adopted an Order designating Mr. Schoenbohm's application for hearing. Mr. Schoenbohm filed a timely appearance. The issues, as expanded and modified by the Order of the Presiding Administrative Law Judge on June 5, 1995, are:

- (a) To determine whether, in light of the conviction described in the Hearing Designation Order, Herbert L.

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Schoenbohm is qualified to renew his amateur service licenses.

(b) To determine whether Herbert L. Schoenbohm violated Section 1.1210 of the Commission's Rules, 47 C.F.R.

§ 1.1210, by soliciting or encouraging others to make a presentation that he was prohibited from making.

(c) If it is determined that Herbert L. Schoenbohm did violate Section 1.1210 of the Commission's Rules, 47 C.F.R. § 1.1210, to determine the effect of such a violation on his qualifications to renew his amateur service licenses.

(d) To determine, in light of the foregoing issues, whether granting Herbert L. Schoenbohm's application would serve the public interest, convenience and necessity.

3. The prehearing conference was held on March 30, 1995. Exhibits, including the witnesses' direct testimony in writing, were exchanged prior to the hearing. The hearing was held on August 8, 1995, and the record was closed the same day.

#### FINDINGS OF FACT

##### Conviction

4. In Government v. Schoenbohm, No. Crim: 1991/0108 (D.V.I. Dec. 30, 1992), Mr. Schoenbohm was convicted in the U.S. District Court for the District of the Virgin Islands (District Court) of violating 18 U.S.C. § 1029(a)(1) (fraudulent use of counterfeit access device)<sup>1</sup>. At Mr. Schoenbohm's trial, two witnesses had

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<sup>1</sup>Section 1029 provides, in pertinent part, that whoever "knowingly and with intent to defraud uses one or more counterfeit access devices . . . shall, if the offense affects

testified that Mr. Schoenbohm telephoned them at about the same time that records show calls being placed to their numbers with illicit access codes and five other witnesses to whom calls were placed with illicit access codes had testified that Mr.

Schoenbohm was the only person in the Virgin Islands who ever telephoned them. United States V. Schoenbohm, No. 93-7516, pp. 6-7 (Third Circuit July 22, 1994). The District Court sentenced Mr. Schoenbohm to imprisonment for a term of two months. The District Court suspended execution of this sentence and placed Mr. Schoenbohm under house arrest for two months with two years probation. The District Court also required Mr. Schoenbohm to pay a fine of \$5,000 during the probation period. Mr. Schoenbohm started serving his sentence on January 11, 1993. (Bureau Exhibit 1).

5. On appeal, the U.S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction. United States V. Schoenbohm, No. 93-7516 (Third Circuit July 22, 1994). On November 2, 1994, the U.S. Court of Appeals for the Third Circuit denied Mr. Schoenbohm's petition for a rehearing. United States V. Schoenbohm, No. 93-7516 (Third Circuit November 2, 1994). (Bureau Exhibit 1). On February 28, 1995, the District Court denied Mr. Schoenbohm's motion to vacate his conviction.

6. Mr. Schoenbohm declared that he cannot express any remorse for

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interstate or foreign commerce, be punished as provided . . . ."  
It defines an "access device" as "any plate, card, code, account number, or other means of access that can be used . . . to obtain money, goods, services or any other thing of value . . . ."

the crime of which he was convicted because it would jeopardize an appeal in which he is arguing that he was wrongfully convicted (Schoenbohm Exhibit 1, p. 1). He declared further that the indictment alleged that he evaded telephone charges totalling \$1,047 (Schoenbohm Exhibit 1, p. 1; Tr. 69); and that the events on which his conviction was based occurred eight years ago (Schoenbohm Exhibit 1, p. 1). Mr. Schoenbohm also declared that his conviction stemmed from a dispute with a long distance telephone service provider, that he was not convicted of stealing any money or accessing the account of any telephone subscriber, and that he was convicted solely of knowing certain telephone access codes (Schoenbohm Exhibit 7, p. 2).

7. At the time of his conviction, Mr. Schoenbohm had been employed since 1979 as Chief of Communications for the Virgin Islands police department (Schoenbohm Exhibit 1, p. 1; Tr.57-58). Mr. Schoenbohm declared that he suffered immensely as a result of his conviction, losing his job, future retirement benefits worth at least \$150,000, and health care benefits in addition to serving two months of confinement and two years of probation (Schoenbohm Exhibit 1, p. 1).

8. Mr. Schoenbohm testified that he does not know: how much he contributed to the pension fund while he was employed by the police department (Tr. 66); whether the government matched his contribution (Tr. 66); how long it was necessary to work to qualify for a pension (Tr. 66-67); what percentage of his income he would receive as pension benefits (Tr. 67); whether his

pension contributions were refunded after he was fired (Tr. 67-68); or whether, after being rehired by the Virgin Islands Government, he was given the option of putting money back into the pension fund to cover his service with police department (Tr. 68). Mr. Schoenbohm also testified that he did not know whether he forfeited his pension when he was fired (Tr. 68) but later testified that he did lose his retirement benefits as a result of being fired (Tr. 70).

#### Current Employment

9. Mr. Schoenbohm declared that he has a job as "Director of Transportation for the Virgin Islands Government under the Department of Property and Procurement" for which he is paid \$42,000 per annum (Schoenbohm Exhibit 2). In his live testimony, however, he described his job as "Coordinator of Transportation, Property and Procurement" (Tr. 58). Schoenbohm's job with the Virgin Islands Government is a political appointment (Tr. 58). Additionally, Mr. Schoenbohm is employed part time as a District Field Representative for Delegate Victor O. Frazer, who represents the Virgin Islands in the United States House of Representatives (Schoenbohm Exhibit 4; Tr. 52-53).

#### Public Service

10. Mr. Schoenbohm declared that he has engaged in the following public service activities: Chairman of the State Emergency Communications Committee for the Virgin Islands from March 1978 until his conviction in December 1992 (Schoenbohm Exhibit 1, 1A, 1B); assisting, on June 5, 1987, with the apprehension of a

hijacker (Schoenbohm Exhibit 1, 1C); arranging, by means of amateur radio, for the safe rescue at sea of Thor Heyerdahl in 1969 (Schoenbohm Exhibit 1); providing communications during Hurricanes David and Frederick in 1979 (Schoenbohm Exhibit 1, 1D); providing communications "in an effort to save lives and property" during Hurricane Hugo in 1989 (Schoenbohm Exhibit 1, 1E); and providing communications during Hurricane Andrew in 1992 (Schoenbohm Exhibit 1, 1F).

11. Mr. Schoenbohm declared that, as Chairman of the State Emergency Communications Committee for the Virgin Islands, he received a Planning Award (Schoenbohm Exhibit 1). The letter proffered to support this claim does not indicate that Schoenbohm was a recipient of the award (Schoenbohm Exhibit 1B). The record contains no information about the significance of a Planning Award. Aside from Mr. Schoenbohm's claim to have received a Planning Award, the record contains no information about any accomplishments made by Mr. Schoenbohm as Chairman of the State Emergency Communications Committee for the Virgin Islands.

12. The letter proffered to support Mr. Schoenbohm's assertion that he assisted, on June 5, 1987, with the apprehension of a hijacker was directed to him as Chief of Communications, U.S. Virgin Islands (Schoenbohm Exhibit 1C). The letter proffered to support Mr. Schoenbohm's assertion that he provided communications during Hurricane Hugo in 1989 also was directed to him as Chief of Communications (Schoenbohm Exhibit 1E).

### Reputation

13. The record contains no information indicating that Mr. Schoenbohm has a reputation in his community for good character or for honesty and truthfulness.

14. Mr. Schoenbohm is very well known in his community (Tr. 59-66). He has been active in island politics since 1979 and has run for political office (Tr. 59). He won a primary election for a seat in the Virgin Islands senate and also campaigned for other candidates (Tr. 61-62); he claims to have been instrumental in getting Delegate Victor O. Frazer elected to Congress (Schoenbohm Exhibit 3, p. 6). Mr. Schoenbohm has written a newspaper column since 1990 (Tr. 60). Additionally, Mr. Schoenbohm was employed as a radio talk show host at broadcast stations in the Virgin Islands during 1980 and between 1992 and 1995 (Tr. 62-64); he currently hosts a Monday through Friday talk show on an uncompensated basis (Tr. 64-66). Mr. Schoenbohm also worked as a stringer for a local radio station, over which he reported news stories (Tr. 60).

### Ex Parte Discussion

15. The parties stipulated that Schoenbohm Exhibit 3 is an essentially accurate transcription of a tape recording made by Mr. Hugh J. LeBlanc at about 8:30 a.m. on April 3, 1995 (Tr. 32-34). The transcription indicates that Schoenbohm made amateur radio transmissions on the frequency 14.313 MHz concerning a number of subjects. In particular, Schoenbohm made the following transmissions:

Well, I'm not allowed, I'm not allowed under the ex parte rules to ask for assistance of, with people in political positions but other people, if they feel that government is overbearing or I'm being treated unfairly, have every right to point this out to their elected representatives. Congressional inquiries may indicate that these things will be conducted under the scrutiny of greater illumination but I am not permitted under ex parte rules to engage in asking for assistance. We don't have a Republican here but the person elected to Congress presently is from here. He is an independent. He is a wonderful person and I was very, very instrumental in getting him elected to Congress. If you [covered up by Mr. LeBlanc's remark]

... presently though, he is a nonvoting delegate. We don't have a vote except in committee and I just don't know what he could do in a situation like this but I am not permitted, I'm not permitted at this time because of ex parte rules to make any requests for political intervention. Other people could do it if they're so disposed but I can't do it. Go ahead.

[covered up by Mr. LeBlanc's remark] ... It's in the Longworth Building in Washington, D.C.

[Amateur Station AB4PW not heard on LeBlanc's tape.]

Victor Frazer, F-R-A-Z-E-R, Victor Frazer. His phone number is area code 202-225-1700.

[conversation continues]

Getting back to the other thing. I think that there is one thing that can be established. If you have observed KV4FZ operating his station in a manner that you think is beneficial to communications, emergency communications, or during Hugo [Hurricane], or Hurricane Andrew, or Hurricane Frederick or Bob, I don't go back to [Hurricane] David and Hurricane Gilbert, the one in Jamaica. If you have any indication or any observation, that is something you can raise in a letter to someone else if you observed it, it may have an impact. I don't know if the other things will or will not, but you may ask. I think what you should do, if it were me I would ask the question of the gentleman that you plan to write whether or not he feels, he feels the cancellation or the refusal to renew the license of KV4FZ would have a negative impact on the communications readiness and preparedness [covered up by LeBlanc talking to himself] whether or not to renew the license or the failure to renew the license would have a negative impact on the people of his constituency. That might make a difference, but I, it would depend on how things are crafted. AB4PW, KV4FZ.



16. Both before and shortly after this proceeding was designated for hearing, Schoenbohm sent letters to elected officials requesting assistance (Schoenbohm Exhibit 7, p. 1). He declared that he had no knowledge, at that time, of the Commission's ex parte rules and that he sent no further such letters after his attorney explained the Commission's ex parte rules to him (Schoenbohm Exhibit 7, p. 1). Schoenbohm declared further that his remarks on April 3, 1995 (set forth in paragraph 15, above) were intended to be nothing more than an exposition of his newly acquired knowledge concerning the ex parte rules (Schoenbohm Exhibit 7, p. 1). Schoenbohm also declared, inconsistently, that, on April 3, 1995, he was not aware the Commission prohibited soliciting political intervention and that, if he had been aware of such a prohibition, he would have been "much more careful to avoid any language that would suggest either directly or indirectly any such solicitation" (Schoenbohm Exhibit 7, p. 4).

17. Mr. Malcolm B. Swan declared that, during his April 3, 1995, conversation with Mr. Schoenbohm he asked Mr. Schoenbohm who represented the Virgin Islands and that Mr. Schoenbohm provided Delegate Frazer's name, address and telephone number, in response to this question (Schoenbohm Exhibit 5).

#### CONCLUSIONS OF LAW

18. The ultimate issue in this proceeding is whether, in light of his 1992 conviction for fraudulently using a counterfeit access device and his alleged solicitation of an ex parte

presentation, Herbert L. Schoenbohm has the requisite character qualifications to be an amateur licensee. On the basis of the record of this case, Mr. Schoenbohm lacks those qualifications.

#### Solicitation of Ex Parte Presentation

19. Mr. Schoenbohm's claim that he did not intend to solicit others to make ex parte presentations in his behalf is not credible because it is contradicted by the plain meaning of his words. Schoenbohm stated that he is not permitted to make any requests for "political intervention" in this matter but other people can do so. He then provided the name, address and telephone number of congressional Delegate Victor Frazer. Mr. Schoenbohm went on to make specific suggestions about the content of letters written to congressmen in his behalf -- such as providing information concerning Mr. Schoenbohm's participation in emergency communications and asking the congressmen whether the nonrenewal of Mr. Schoenbohm's amateur licenses would have any negative impact on their constituents (Findings of Fact, Paragraph 15). Finally, the clear implication of Mr. Schoenbohm's claim to have been instrumental in Delegate Frazer's election (Findings of Fact, Paragraphs 14,15) is that Delegate Frazer is indebted to him and, therefore, would be inclined to assist him.

20. Mr. Swan claims that, when Mr. Schoenbohm provided Delegate Frazer's name, address and telephone number, he was responding to Mr. Swan's question asking who represented the U.S. Virgin Islands (not heard on the tape recording made by Mr. LeBlanc).

Even if this claim is true, it is clear that Mr. Schoenbohm was encouraging Mr. Swan and any others who were listening to solicit ex parte presentations on his behalf (Findings of Fact, Paragraph 17).

21. Mr. Schoenbohm actually admitted that, before and shortly after this proceeding was designated for hearing, he sent letters to elected officials requesting assistance (Findings of Fact, Paragraph 16).

22. It must be concluded that Mr. Schoenbohm did, as alleged, violate Section 1.1210 of the Commission's Rules, 47 C.F.R. § 1.1210, by soliciting and encouraging others to make a presentation that he was prohibited from making.

#### Effect of Conviction

23. The standard used to evaluate the effect of a felony conviction upon an applicant's qualifications is set forth in the Commission's policy statements regarding character qualifications. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1183 (1986), recon., 1 FCC Rcd 421,424 (1986), appeal dismissed sub nom. National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987), as modified, 5 FCC Rcd 3252, 3253 (1990) [to cover nonbroadcast licensees], recon., 6 FCC Rcd 3448 (1991). The Commission's inquiries into an applicant's character focus on "the likelihood that an applicant will deal truthfully with the Commission and comply with the Communications Act and [Commission] rules and policies." Policy Regarding Character

Qualifications in Broadcast Licensing, 5 FCC Rcd 1179, 1183 (1986).

#### Truthfulness

24. Mr. Schoenbohm's conviction of a felony involving fraudulent conduct reflects on his propensity for truthfulness. See Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 1179, 1196-97 (1986). He has the burden of proving that, despite his conviction, he can be relied on to deal with the Commission truthfully. Mr. Schoenbohm has not presented any substantial evidence to establish his truthfulness. Mr. Schoenbohm is so well known in his community that, if he has a reputation in the community for truthfulness and honesty, there should be many people who could testify about that reputation. Nevertheless, Mr. Schoenbohm failed to produce a single witness who testified that he had a reputation in his community for truthfulness and honesty. By contrast, in In Re Application of Richards, FCC 95R-04, on which Mr. Schoenbohm is relying, the applicant, Richard Richards, produced no fewer than 26 such witnesses. Id. at para. 8.

25. Mr. Schoenbohm not only has failed to present any evidence that he has a reputation for truthfulness; he has provided, through his testimony, additional evidence indicating that he cannot be relied upon to tell the truth by giving inconsistent, incredible and misleading testimony. For inconsistent testimony, see Findings of Fact, Paragraphs 8, 9, and 16. As pointed out above in Paragraph 19, Mr. Schoenbohm testified

incredibly about his solicitation of an ex parte presentation (Findings of Fact, Paragraph 16). Mr. Schoenbohm's testimony concerning his pension rights is also incredible (Findings of Fact, Paragraphs 7 and 8) -- it is not reasonable to believe that anyone in Mr. Schoenbohm's position would have so little knowledge about his pension rights, particularly when he is claiming to have lost pension rights worth \$150,000. Finally, Schoenbohm mischaracterized his conviction as being solely for knowing certain access codes (Findings of Fact, Paragraph 6) rather than for the fraudulent use of counterfeit access codes, the offense that Schoenbohm was actually convicted of (Findings of Fact, Paragraph 4).

26. It must be concluded that the Commission cannot rely upon Mr. Schoenbohm to be truthful in his dealings with the Commission.

#### Reliability

27. Mr. Schoenbohm's felony conviction also reflects on his propensity to obey the law, i.e., his reliability as a licensee. Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 3252 (1990). Mr. Schoenbohm has the burden of showing that, if he is granted a license, the Commission can rely on him to obey the Communications Act and the Commission's Rules.

28. The Commission uses the following mitigation factors for analyzing misconduct: the willfulness of the misconduct; the frequency of the misconduct; the currentness of the misconduct; the seriousness of the misconduct; the nature of the

participation (if any) of managers or owners; efforts made to remedy the wrong; overall compliance with Commission rules and policies; and rehabilitation. See Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1225-1229 (1986) and Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 3252 (1990).

(a) Willfulness. Since Mr. Schoenbohm was convicted of fraudulent actions, it is clear that his misconduct was willful.

(b) Frequency. The evidence presented at trial indicated that Mr. Schoenbohm used counterfeit access devices to call at least seven persons (Findings of Fact, Paragraph 4).

(c) Currentness. In a renewal case, any misconduct occurring within the current license term can be considered. Policy Regarding Character Qualifications in Broadcast Licensing, 102 FCC 2d 1179, 1229 (1986). Mr. Schoenbohm's misconduct occurred in 1987 (Findings of Fact, Paragraph 7), during his current license term, which began on March 2, 1984, and has been extended by the pendency of his renewal application. Since Mr. Schoenbohm's misconduct was the subject of a criminal case that he claims to still be litigating, it is hardly stale. The Commission began this proceeding promptly after the Third Circuit Court of Appeals rejected Mr. Schoenbohm's appeal.

(d) Seriousness. The applicant was convicted of communications related fraud. Any suggestion that, in light

of the sentence imposed, the District Court did not consider Mr. Schoenbohm's crime to be serious would be incorrect. In fact, sentencing a nonviolent first offender to any period of confinement indicates that the court did consider it a serious matter. Mr. Schoenbohm himself claims to have suffered immensely as a result of his conviction and sentencing (Findings of Fact, Paragraph 7).

(e) The Nature of the Participation of Managers or Owners.  
Not applicable.

(f) Efforts to Remedy. The record contains no indication that Mr. Schoenbohm has taken any steps to remedy his misconduct. Richard Richards, by contrast, took significant steps to remedy his misconduct. In Re Application of Richards, supra at paras. 6, 7, 34. Mr. Schoenbohm has even not expressed remorse for his crime (Findings of Fact, Paragraph 6) -- the first step in remedying misconduct. Mr. Schoenbohm's claim that he cannot express remorse for his crime because it would jeopardize his appeal (Findings of Fact, Paragraph 6) is specious. The record contains no documentary proof that Mr. Schoenbohm has an appeal pending. The U.S. Court of Appeals for the Third Circuit affirmed Mr. Schoenbohm's conviction and denied his petition for a rehearing. The District Court then denied his motion for a new trial.

(f) Overall Record of Compliance. The record of this case does not indicate whether Mr. Schoenbohm has an overall

record of compliance. Richard Richards, by contrast, did have an overall record of compliance in the operation of his broadcast station. Id. at paras. 9,32, 38.

(g) Rehabilitation. The evidence presented in this proceeding includes no convincing evidence of rehabilitation. The Commission has specified four factors to be considered in determining whether an applicant has been rehabilitated. See Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252, 3254 n.4 (1990).

i. The first specified factor is whether the applicant has been involved in any significant wrongdoing since the misconduct occurred. Mr. Schoenbohm has been involved in significant wrongdoing; as concluded above in Paragraph 22, Mr. Schoenbohm violated the Commission's ex parte rules. Furthermore, even if there had not been significant wrongdoing, there has been insufficient time since the end of Mr. Schoenbohm's probation for him to demonstrate rehabilitation through the avoidance of wrongdoing [Mr. Schoenbohm, who was sentenced to two months of house confinement and two years of probation, started serving his sentence on January 11, 1993 (Findings of Fact, Paragraph 4)].

ii. The second factor is how much time has elapsed since the misconduct. As indicated above, Mr.



Schoenbohm's misconduct occurred during the current license term and, therefore, can be considered.

iii. The third factor is the applicant's reputation for good character in the community. Although he is well known in his community (Findings of Fact, Paragraph 14), Mr. Schoenbohm did not produce a single witness who testified about his reputation for good character (Findings of Fact, Paragraph 13). By contrast, Richard Richards produced 26 character witnesses. In Re Application of Richards, supra at para. 8.

iv. The fourth factor is whether meaningful measures were taken by the applicant to prevent future occurrence of the misconduct. As indicated above, Mr. Schoenbohm took no such measures.

v. Although employment is not one of the Commission's specified rehabilitation factors, the only evidence that Mr. Schoenbohm produced to prove rehabilitation is his employment as Director of Transportation by the Virgin Islands Government and as a (part time) District Field Representative by Congressional Delegate Victor O. Frazer (Findings of Fact, Paragraph 9). For a person who has not been regularly employed and has been supported by criminal activities, obtaining employment is a significant step toward rehabilitation. In Mr. Schoenbohm's case, however, the record shows that,

rather than being supported by criminal activities, he has been regularly employed (Findings of Fact, Paragraphs 9 and 13). Furthermore, Mr. Schoenbohm's employment cannot be used to infer that he has a reputation for good character. Both appointments were political (Findings of Fact, Paragraph 9) and, therefore, were not necessarily based on merit. The role, if any, of Mr. Schoenbohm's character in his selection is unknown. If Mr. Schoenbohm's employers had any first-hand knowledge of his reputation in the community for good character, then the best evidence of this reputation would be their testimony -- but Mr. Schoenbohm did not offer such testimony. Mr. Schoenbohm's employment is of minimal significance at best in determining whether he has been rehabilitated. The foregoing analysis indicates that Mr. Schoenbohm has not been rehabilitated. The proffered evidence of his rehabilitation is very minimal at best; on the other hand, Mr. Schoenbohm's willingness to flout the Commission's ex parte rules convincingly demonstrates that he has not been rehabilitated.

(h) Public Service. This is not one of the Commission's specified mitigation factors. Although commendable, Mr. Schoenbohm's public service activities can have no mitigating effect. The Commission held in David B. Hodges, 4 FCC Rcd 8692, 8692 (1989), that an amateur's public

service contributions, even if substantial, do not mitigate violations that warrant enforcement sanctions. Even without this holding, it would be evident, for the following reasons, that little or no mitigating effect should be given to Mr. Schoenbohm's public service activities:

i. There is no information in the record as to any accomplishments by Mr. Schoenbohm as Chairman of the State Emergency Communications Committee for the Virgin Islands, except for his unsupported claim to have received a "planning award" (Findings of Fact, Paragraph 11).

ii. Mr. Schoenbohm's assisting in the apprehension of hijacker during 1987 (Findings of Fact, Paragraphs 10 and 11) apparently is something that he did in connection with his job.

iii. As for Mr. Schoenbohm's provision of emergency communications to Thor Heyerdahl in 1969 and during hurricanes in 1979, 1989, and 1992 (Findings of Fact, Paragraph 10), it is not surprising that an active amateur who resides in an area prone to tropical storms would provide emergency communications on a number of occasions over a period of 23 years. While this activity is certainly commendable, it is not unusual.

(i) Sufficiency of Penalty Already Imposed. This also is not one of the specified mitigation factors; it will be considered because this line of argument is suggested by Mr.

Schoenbohm's assertion that he has suffered immensely as a result of his conviction (Findings of Fact, Paragraph 7). This proceeding seeks to determine Mr. Schoenbohm's qualifications for an amateur service license. A denial of Mr. Schoenbohm's pending application on the basis that he is unqualified would not be punitive. In Re Applications of RKO General, 78 FCC 2d 1, 115-116 (1980). See also Robert P. Milbert, 71 FCC 2d 1291, 1294 (Rev. Bd. 1979) and Charles A. Stevens, Sr., 75 FCC 2d 294, 298 (Rev. Bd 1979). The punishment resulting from Mr. Schoenbohm's criminal conviction, therefore, cannot be a mitigating factor in determining whether he is qualified. It should also be noted that Mr. Schoenbohm's claim that he suffered severe financial loss because he lost \$150,000 in pension rights is completely unsupported by record. Richard Richards, on the other hand, did suffer a severe financial loss resulting from the forfeiture of his home and ranch. In Re Application of Richards, supra at para. 21.

29. The foregoing analysis of the mitigation factors indicates no significant mitigation of Mr. Schoenbohm's misconduct. It must be concluded that the Commission cannot rely on Mr. Schoenbohm to obey the Communications Act and the Commission's Rules.

#### Summary

30. Mr. Schoenbohm was found guilty of a felony involving fraudulent conduct in a communications service regulated by the

Commission. That conviction evinces a likelihood that, if Mr. Schoenbohm's application is granted, the Commission will not be able rely on him to be truthful or to comply with the Communications Act and Commission's Rules and policies. He has not sustained his burden of proving otherwise. Additionally, Mr. Schoenbohm flouted the Commission's ex parte rules; this is the final "nail in the coffin" showing that he can't be relied on. It is evident that Mr. Schoenbohm does not possess the requisite qualifications for a renewal of his amateur station and operator licenses.

#### Ultimate Conclusions

31. In view of the foregoing, it must be concluded that:

(a) In light of the conviction described in the Hearing Designation Order, Herbert L. Schoenbohm is not qualified to renew his amateur service licenses.

(b) Herbert L. Schoenbohm violated Section 1.1210 of the Commission's Rules, 47 C.F.R. § 1.1210, by soliciting or encouraging others to make a presentation that he was prohibited from making.

(c) The effect of Herbert L. Schoenbohm's violation of Section 1.1210 of the Commission's Rules, 47 C.F.R. § 1.1210, on his qualifications to renew his amateur service licenses is to add an additional ground for disqualification and to reinforce the ultimate conclusion (a) by confirming that he cannot be relied to obey the Commission's Rules.

(d) In light of the foregoing issues, granting Herbert

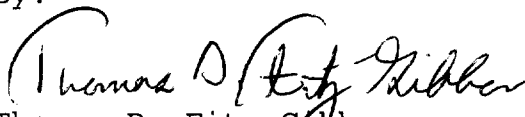
L.Schoenbohm's application would not serve the public interest, convenience and necessity.

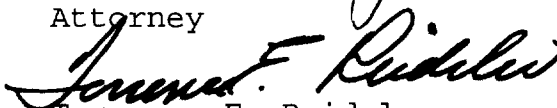
(e) Herbert L. Schoenbohm's application to renew his amateur service licenses must be denied.

Respectfully Submitted,

Regina M. Keeney  
Chief, Wireless Telecommunications Bureau

By:

  
Thomas D. Fitz-Gibbon  
Attorney

  
Terrence E. Reideler  
Attorney

Dated: September 15, 1995

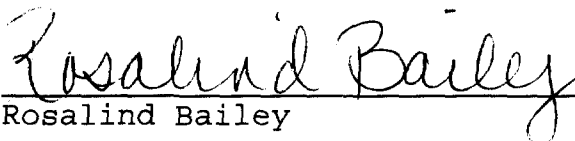
Certificate of Service

I, Rosalind Bailey, certify that, on September 15, 1995, copies of the foregoing Proposed Findings of Fact and Conclusions of Law, filed on behalf of the Chief, Wireless Telecommunications Bureau, were sent by First Class Mail to:

Lauren A. Colby  
Attorney at Law  
P.O. Box 113  
Frederick, Maryland 21705-0113

and

Administrative Law Judge  
Edward Luton (Hand delivered)

  
Rosalind Bailey